Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000259-001 DT 07/26/2011

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
T. Melius
Deputy

STATE OF ARIZONA

v.

NICK J POLYDOROS (001)

SETH W PETERSON

NICK J POLYDOROS
26672 N 79TH ST
SCOTTSDALE AZ 85266

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number m–0751–tr–2010–007655.

Defendant-Appellant Nick J. Polydoros (Defendant) was convicted in Scottsdale Municipal Court of exhibition of speed in violation of A.R.S. § 28–708(A). Defendant contends the evidence was not sufficient of support his conviction. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On March 12, 2010, Defendant was cited for exhibition of speed in violation of A.R.S. § 28–708(A). At trial, Officer Wayne Crenshaw testified he was working off-duty for the Goodguys Car Show near 94th Street and Bell Road. (R.T. of Nov. 1, 2010, at 7–8.) At this particular location, the road was closed to northbound traffic. (*Id*. at 9–10.) Officer Crenshaw saw a silver Mercedes driving northbound, so he and Sergeant Bernie Hill attempted to stop the vehicle and help the driver leave the area safely. (*Id*. at 10–11.) The driver ignored the officers, and Sergeant Hill had to move out of the way to avoid being hit by the vehicle. (*Id*. at 11.) Officer Crenshaw got on his motorcycle and proceeded after the vehicle, and then was able to stop the vehicle. (*Id*. at 11–12.) He identified Defendant as the driver of the vehicle. (*Id*. at 15.) Once Officer Crenshaw stopped Defendant, Defendant got out of the vehicle and began screaming at him. (*Id*. at 13.) Officer Crenshaw ultimately gave Defendant a citation for failure to obey a traffic control device and failure to drive left of center. (*Id*. at 14, 24.) Officer Crenshaw testified that, as Defendant drove off, he stopped at the intersection, and when the light turned green, Defendant revved the engine and spun his right rear tire as he made a right turn. (*Id*. at 15–17, 38.) Officer Cren-

shaw got back on his motorcycle and followed Defendant, and ultimately gave him a citation for exhibition of speed. (*Id*. at 19–20.)

After the State rested, Defendant made a motion to dismiss the civil charges. (R.T. of Nov. 1, 2010, at 62.) The trial court granted the motion for the failure to drive left of center and denied it for the failure to obey a traffic control device. (*Id*. at 68.) Defendant then testified and contradicted much of what Officer Crenshaw had said. (*Id*. at 76–96.) The trial court found Defendant guilty of the exhibition of speed charge and responsible for the failure to obey a traffic control device charge. (*Id*. at 103.) For the exhibition of speed charge, the trial court imposed a fine of $507.60. On November 9, 2010, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. *Was the evidence sufficient to support the verdict.*

Defendant contends the evidence was not sufficient to support the verdict. An appellate court will not reverse a conviction for insufficient evidence unless there is no substantial evidence to support the verdict. *State v. Scott*, 187 Ariz. 474, 477, 930 P.2d 551, 554 (Ct. App. 1996), *citing State v. Hallman*, 137 Ariz. 31, 38, 668 P.2d 874, 881 (1983). Substantial evidence is more than a mere scintilla, and is what a reasonable person could accept as sufficient to support a guilty verdict beyond a reasonable doubt. *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Montano*, 204 Ariz. 413, 65 P.3d 61, ¶ 43 (2003), *quoting State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981). "When considering whether a verdict is contrary to the evidence, this court does not consider whether it would reach the same conclusion as the jury, but whether there is a complete absence of probative facts to support its conclusion." *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

In the present case, Officer Crenshaw testified Defendant revved the engine of his vehicle and spun his right rear tire as he made a right turn. (R.T. of Nov. 1, 2010, at 15–17, 38.) This Court concludes that was evidence a reasonable person could accept as sufficient to support a guilty verdict beyond a reasonable doubt. The evidence was therefore sufficient to support the verdict.

Defendant notes his testimony was contrary to Officer Crenshaw's testimony and thus the evidence was not sufficient. In addressing the role of an appellate court in reviewing conflicting evidence and testimony, the Arizona Supreme Court has said the following:

> Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and wit-

> nesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to "look over the shoulder" of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). Because this issue involves "an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge" rather than a "question . . . of law or logic," it is not appropriate for this Court to "substitute [its] judgment for that of the trial judge."

Defendant further contends Officer Crenshaw's testimony and the trial court's ruling were both inconsistent with Exhibit 10, which shows a tire mark on the stop line. On direct examination, Officer Crenshaw testified as follows:

> A. Well, it's a 90-degree turn, so he went from one crosswalk line to the next crosswalk line spinning his tires, taking off down—eastbound on Bell Road.

(R.T. of Nov. 1, 2010, at 16.) On cross-examination, the following exchange took place:

> Q. . . . Now, Officer, the—the black mark that you're referring to extended from behind the crosswalk on 94th Street through the other crosswalk that would have been on Bell Road for anyone that wanted to cross from the south side of Bell to the north side of Bell; correct?
>
> A. Correct.

(*Id*. at 37–38.) Exhibit 10 shows a tire mark starting to the left of the stop line, continuing through the stop line, and heading to the right toward the crosswalk line, but the photograph does not show the area where the tire mark would have crossed the crosswalk line. Because Exhibit 10 shows the black mark extending from behind (to the left of) the crosswalk on 94th Street, that exhibit is not inconsistent with Officer Crenshaw's testimony.

In making its ruling, the trial court said the following:

> On exhib—defendant's own exhibits, 10, as well as Number 9, as it relates to taking that right-hand turn, there is a skid mark that is pronounced in the right—the white area of the crosswalk and, quite frankly, it follows through, if you follow the demarcation of where it would begin and where it would end and right through the other crosswalk once the right-hand turn was completed. And it's clearly a black skid mark that is noted on that particular—those particular photographs.

(R.T. of Nov. 1, 2010, at 104.) The trial court was inaccurate because the tire mark shown in Exhibit 10 is in the white area of the stop line, and not on the crosswalk because that photograph does not show the area where the tire mark would have crossed the crosswalk line. That photograph is, however, somewhat confusing because the left-hand line (running top to bottom) and the line to the right of it (running from the top to the middle of the right-hand edge) appear to mark the crosswalk. It is only after one studies the photograph and notices the small line in the upper right-hand corner of the photograph does one realize that the line to the left is the stop line and the two lines to the right are the crosswalk lines. This Court concludes, however, the trial court's statement does not affect the trial court's verdict. It is clear the trial court was referring to tire mark on the white line running top to bottom of the photograph, and the finding the trial court made was that the tire mark went from the area on 94th Street to the other crosswalk on Bell Road. It thus does not matter whether the trial court denominated that white line the crosswalk line or the stop line.

B. *Does the record support Defendant's contention that Officer Crenshaw was fabricating evidence and testimony.*

Based on materials Defendant has submitted to this Court, he contends the Officer Crenshaw was fabricating evidence and testimony. On the matter of materials submitted to the appellate court that were never presented to the trial court, the Arizona Supreme Court has said the following:

> Because our court does not act as a fact-finder, we generally do not consider materials that are outside the record on appeal. Were we inclined to consider the late-presented documents in this case, we would first have to satisfy ourselves about their authenticity, since we have been provided only photocopies of pages purportedly taken from various proceedings. This court, however, is ill-equipped to resolve disputes over authenticity. Thus, the customary way to prove a prior offense is by introducing appropriate documentary evidence in the trial court. We see no reason to depart from this procedure, especially where life or death might literally hang in the balance. Regardless of the extent to which judicial notice may be appropriate in other contexts, therefore, we are not persuaded that it should be used at the appellate level to establish the existence of aggravating factors in a capital case. We hold that the (F)(2) finding is unsupported.

State v. Schackart, 190 Ariz. 238, 247, 947 P.2d 315, 324 (1997) (citations omitted); *accord, State v. Fischer,* 219 Ariz. 408, 199 P.3d 663, ¶ 43 n.13 (Ct. App. 2008). Because Defendant never presented to the trial court this information about Officer Crenshaw's work schedule and Officer Crenshaw was never questioned about this issue, this Court will not consider Defendant's claim, which he raises for the first time on appeal. If Defendant wished to obtain any relief on this claim, he will have to present it first to the trial court.

. . . .

III. CONCLUSION.

Based on the foregoing, this Court concludes the evidence supported the trial court's verdict.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT 072620111110